

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

AMERICAN CIVIL LIBERTIES UNION OF  
SOUTH CAROLINA,

Plaintiff,

v.

BRYAN STIRLING, in his official capacity as  
director of the South Carolina Department  
of Corrections,

Defendant.

Case No. 3:24-cv-00906-JDA

**Declaration of David Allen Chaney Jr.  
In Support of Preliminary Injunction**

*I, David Allen Chaney Jr., certify under penalty of perjury that the following statements are true and correct pursuant to 28 U.S.C. § 1746.*

1. My name is David Allen Chaney Jr., and I go by “Allen.” I am older than eighteen years of age and am licensed to practice law in this State and in this District. The statements in this declaration are based upon my own personal knowledge.

**Mission, Vision, and Activities of ACLU-SC**

2. I am the Legal Director of the American Civil Liberties Union of South Carolina (“ACLU-SC”), and have direct knowledge of the organization’s mission, vision, and activities.

3. ACLU-SC is a nonprofit organization registered in South Carolina. ACLU-SC is an affiliate of the American Civil Liberties Union (“ACLU”).

4. ACLU-SC’s vision is “a just South Carolina where We the People means all of us.” To bring this vision to life, ACLU-SC advocates, litigates, educates, and mobilizes to defend and advance the civil rights and civil liberties of all South Carolinians.

5. ACLU-SC works on many different issue areas, including First Amendment rights, prisoners' rights, death penalty abolition, and LGBTQ rights.

6. ACLU and its affiliates routinely engage in First Amendment litigation, including in cases asserting ACLU's own First Amendment rights. *See, e.g., Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997); *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564 (2002); *American Civil Liberties Union of Md., Inc. v. Wicomico Cnty., Md.*, 999 F.3d 780 (4th Cir. 1993); *American Civil Liberties Union Foundation of S. Carolina v. Spartanburg Cnty.*, Case No. 7:17-cv-01145-TMC, 2017 WL 5589576 (D.S.C. Nov. 17, 2017).

7. As part of its advocacy, ACLU-SC employees regularly visit and call people that are incarcerated in SCDC.

8. In addition to litigation, ACLU-SC also regularly engages in public messaging about, and in support of, our issues-related work.

9. ACLU-SC's public advocacy work is led by its communications director, Paul Bowers. Mr. Bowers is an experienced and decorated journalist. Other members of ACLU-SC's staff are also involved in communications efforts, including by writing articles, giving interviews, and posting on social media.

10. ACLU-SC's communications work includes issuing press releases, publishing blogs, writing op-eds, and creating and posting social media content.

11. Whenever possible, ACLU-SC attempts to center its clients and other folks who are directly impacted by our advocacy. In service of that commitment, we always seek to include quotes from our clients, coalition partners, and impacted individuals in our publications.

12. Many of the blog posts on ACLU-SC's website reflect the organization's commitment to centering impacted voices. Examples include:

- [Q&A with Mary Wood, a South Carolina teacher resisting censorship](#)
- [Q&A with Ellen Hopkins, a young adult author whose works are frequent targets of censorship efforts](#)

- [Q&A with Alleria Stanley, a South Carolina-born veteran, about how trans healthcare bans hurt military families](#)

13. Mr. Bowers has published one written piece about an incarcerated client—Brittany Martin. Ms. Martin is Black woman who was arrested and prosecuted for participating in a nonviolent protest in Sumter, South Carolina following the murder of George Floyd. Mr. Bowers interviewed Ms. Martin about her experience at the protest, her life generally, and her experience behind bars. The resulting blog piece is full of direct quotes from Ms. Martin and has been viewed more than 2,200 times on the ACLU-SC website. Mr. Bowers was only able to publish the piece without fear of punishment because Ms. Martin is being held in Illinois, instead of SCDC.

14. Since starting as communications director, Mr. Bowers has begun using more multimedia content. Though he continues to publish written materials, Mr. Bowers has also started creating video and audio content to publish content on behalf of ACLU-SC.

15. Mr. Bowers has also created and recorded a series of podcasts that investigate the eviction crisis in South Carolina. Though not yet released, these podcasts will support ACLU-SC's housing justice advocacy by better explaining the problem, humanizing those suffering its effects, and providing possible solutions.

### **Sofia Cano**

16. Sofia Cano is a transgender woman imprisoned at the South Carolina Department of Corrections (SCDC). ACLU-SC represents Ms. Cano in a lawsuit against SCDC that alleges violations of Ms. Cano's rights under the Eighth Amendment and the Americans with Disabilities Act. The case number is 9:22-cv-04247-JDA-MHC.

17. Ms. Cano was first incarcerated at age 13, and at age 16 began to experience deep incongruence with her assigned gender. When she was 18, Ms. Cano began discussing her gender identity issues and resulting distress with mental health professionals at SCDC. Eventually, Ms. Cano was diagnosed with gender dysphoria by prison officials. Because of her

gender dysphoria, Cano has experienced suicidal ideation and has attempted auto-castration. Prevailing medical standards provide that Ms. Cano should receive hormone therapy, but SCDC refuses to provide that treatment. As a result of her untreated gender dysphoria, Ms. Cano has continued to endure serious distress.

18. From the beginning of ACLU-SC's representation of Ms. Cano, she has expressed a desire to speak publicly about her case. Specifically, Ms. Cano desires to communicate with the public about her experience at SCDC being denied treatment for her gender dysphoria.

19. Aside from its representation of Ms. Cano, ACLU-SC is actively involved in advocacy on behalf of transgender South Carolinians. This advocacy includes informing the public about healthcare for transgender individuals and fighting against legislation that would reduce or eliminate access to gender affirming healthcare.

20. Paul Bowers has interviewed Ms. Cano about her experience with gender dysphoria in SCDC and the deep distress she suffered as a result of SCDC denying treatment because of her gender dysphoria.

**Marion Bowman, Jr.**

21. Marion Bowman is a man held on death row at SCDC.

22. I became familiar with Mr. Bowman's case through his capital attorneys, Lindsey Vann of Justice 360 and Teresa Norris of the Capital Habeas Unit for the United States Court of Appeals for the Fourth Circuit.

23. Mr. Bowman is fifth in line to be executed by South Carolina. He has exhausted his appeals, and his attorneys are currently preparing a clemency petition.

24. Mr. Bowman would like to engage in public communications about his case, about why he deserves clemency, and about the conditions he has experienced on death row in South Carolina.

25. I have met with Mr. Bowman two times at SCDC.

26. ACLU-SC has agreed to help record and publish Mr. Bowman's speech in the public through written pieces and a series of audio podcasts.

27. Executions are stayed in South Carolina by order of the South Carolina Supreme Court. In 2022, a trial court agreed with four death row inmates who argued that the firing squad and election chair both violate the State's prohibition on cruel or unusual or corporal punishment. The State appealed that ruling to the South Carolina Supreme Court. The State also subsequently passed a "Shield Law" and obtained pentobarbital—a lethal injection drug.

28. Briefing and arguments are complete in the lawsuit and executions could restart in South Carolina immediately upon a decision from the South Carolina Supreme Court.

29. Paul Bowers has not yet interviewed Mr. Bowman.

### **Impact of the Challenged Policy**

30. Based on SCDC's prohibition on recording or publishing the speech of incarcerated persons, ACLU-SC has elected to refrain from publishing the speech of Ms. Cano or Mr. Bowman and to instead file a pre-enforcement action in federal court.

31. SCDC permits ACLU-SC employees and agents to communicate freely with Mr. Bowman and Ms. Cano, including by arranging in person visits, telephone calls, and video calls.

32. Despite that, ACLU-SC has refrained from recording phone interviews between Mr. Bowers and Mr. Bowman for the purpose of subsequent publication out of fear that doing so will trigger punishment under SCDC's anti-interview and anti-publication policy.

33. The threat of SCDC punishing Mr. Bowman or Ms. Cano is sufficient to deter ACLU-SC from exercising its First Amendment right to record or publish its clients' speech.

### **Exhibits**

34. The following exhibits admitted in support of ACLU-SC Motion for Preliminary Injunction are true and correct to the best of my knowledge:

35.

EXHIBIT	DESCRIPTIVE NAME
A	SCDC Policy GA-02.01 “Employee and Inmate Relations with News Media, Legislators, and Others”
B	SCDC Press Release (Aug. 30, 2023)
C	Ema Schumer, <i>Alex Murdaugh brought new attention to old policy barring SC inmates from talking to media</i> , Post and Courier (Sept. 16, 2023)
D	SCDC Letter to Jim Griffin (Aug. 30, 2023)
E	Murdaugh Incident Report (Aug. 14, 2023)
F	Murdaugh Incident Report (Aug. 15, 2023)
G	Callie Lyons, <i>How Alex Murdaugh Occupies his Time in Prison: Three hots, a cot and a tablet</i> , FITSNews (July 13, 2023)
H	Ellerbe & Asher-Schapiro, <i>Amid nationwide strike, media access to prisons is limited</i> , Columbia Journalism Review (Sept. 6, 2018).
I	SCDC Policy OP-22.53 “Inmate Tablets and Kiosks”
J	Ajeen Ayan, <i>A 50 State Prison Policy Analysis on Media Access</i> (available at: <a href="https://cdr.lib.unc.edu/downloads/kk91fr050">https://cdr.lib.unc.edu/downloads/kk91fr050</a> )

Date: February 22, 2024

A handwritten signature in blue ink, reading "A Chaney Jr", with a horizontal line underneath the signature.

Allen Chaney

S.C. Bar No. 104038, Fed. I.D. No. 13181

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